

**United States Department of Labor
Employees' Compensation Appeals Board**

D.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port Huron, MI, Employer**

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**Docket No. 07-1427
Issued: October 17, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 14, 2007 appellant filed a timely appeal from a January 30, 2007 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back or knee condition causally related to factors of his federal employment.

FACTUAL HISTORY

On November 10, 2006 appellant, then a 56-year-old letter carrier, filed an occupational disease claim alleging that he sustained pain in his lower back, right knee and right ankle as a result of walking around four and a half hours per day. He stopped work on January 30, 2006 and returned to work with restrictions on April 24, 2006.

In a statement received November 27, 2006, appellant related that he delivered mail on a walking route for 15 years in adverse conditions such as snow, ice, steps and uneven ground. His physicians diagnosed degenerative arthritis of the knees on September 4, 2003. Appellant reduced his walking time to around five and a half hours per day immediately before his total knee replacement on January 3, 2006. He walked no more than three hours per day after his surgery but continued to have problems.

On August 30, 2006 a physician discussed appellant's history of a total right knee arthroplasty on January 3, 2006 and noted that he currently walked three to four hours per day at work.¹ Appellant complained of pain in his right knee and "a sharp type pain radiating from his back to his foot at times." The physician diagnosed status post right knee arthroplasty with synovitis, quadriceps weakness and lumbar disc degeneration with Grade 1 spondylolisthesis at L4-5. He stated, "Due to [appellant's] subsequent knee problems and complaints also concerning the total knee and [that] the significant degenerative arthritis to the other knee are significantly aggravated by his work, we are asking for more significant restrictions as far as his ambulation...."

On November 21, 2006 the employing establishment challenged appellant's claim based on the lack of rationalized medical evidence. By letter dated December 1, 2006, the Office informed him that the evidence currently of record was insufficient to establish his claim and requested that he submit additional factual and medical evidence. The Office specifically requested that appellant submit, within 30 days, a detailed medical report addressing the causal relationship between any diagnosed condition and his employment.

By decision dated January 30, 2007, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his claimed medical condition was due to the accepted work events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

¹ The signature of the physician is not legible.

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

Appellant attributed his back and knee condition to his work as a letter carrier on a walking route. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated August 30, 2006, a physician diagnosed a history of a right knee arthroplasty with synovitis, quadriceps weakness and lumbar disc degeneration with spondylolisthesis. The physician discussed appellant's complaints of right knee and back pain radiating into his foot and noted that he walked three to four hours per day at work. The physician requested additional restrictions on appellant's walking time and noted that he complained that his knee problems were "significantly aggravated by his work." The physician did not, however, render his own finding regarding the cause of the diagnosed conditions but instead related appellant's belief that work aggravated his knee condition. A physician's report

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

is of little probative value when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.¹²

An award of compensation may not be based on surmise, conjectures, speculation of upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹³ He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁴ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.¹⁵

CONCLUSION

The Board finds that appellant did not establish that he sustained a back or knee condition causally related to factors of his federal employment.

¹² *Earl David Seal*, 49 ECAB 152 (1997).

¹³ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁴ *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ Appellant submitted new medical evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and requested reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2007 is affirmed.

Issued: October 17, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board